

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICHAEL ANTHONY DAILEY,

Plaintiff,

vs.

No. CIV 08-538 MCA/LFG

ROBERT ULIBARRI, GILBERT GARCIA,
ELMER BUSTOS, JAMES THOMAS,
LEROY W. THOMPSON, and JONI BROWN,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR ADDITIONAL TIME
TO FILE RESPONSE TO DEFENDANTS' MARTINEZ REPORT**

THIS MATTER comes before the Court on Plaintiff Michael Anthony Dailey ("Dailey")'s Request for Additional Time to File a Response to Defendants' Martinez Report [Doc. 22], filed June 22, 2009. No response is necessary.

Dailey filed a *pro se* Complaint [Doc. 1] on June 3, 2008, alleging numerous claims against Defendants. At the time he filed the Complaint, Dailey was incarcerated at the Penitentiary of New Mexico. On July 11, 2008, Dailey filed a Notice of Change of Address [Doc. 7], notifying the Court and all parties of his new address, 246 Burma Drive NE, Albuquerque, NM 87123.

On April 27, 2009, Defendants filed their Martinez Report [Doc. 20], as directed by the Court. The Report is voluminous, including 700-800 pages of attachments. Defendants certified in their Report that they mailed a copy of the Report on April 24, 2009 to Dailey at the address noted in his Notice of Change of Address, including the correct zip code.

Dailey did not file a response to the Martinez Report, and the time for doing so expired. Defendants then filed a Motion to Dismiss or Alternatively for Judgment on the Pleadings [Doc. 21], asking that the case be dismissed with prejudice, on the pleadings, under Fed. R. Civ. P. 12(c). That Motion is currently pending before the District Judge assigned to this case.

On June 22, 2009, the last day for responding to the Motion to Dismiss, Dailey filed the

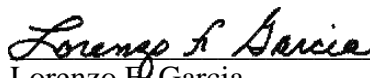
present Motion for Additional Time, stating that he did not timely receive a copy of the Martinez Report. He says that Defendants initially sent the Report to him at his correct address, but with an incorrect zip code. He states further that the Report was then sent back to Defendants, who mailed it to the correct address; however, he asserts that he received it “in a torn and opened large manila envelope wrapped in plastic with the documents out of order and parts of the documents were upside down.” [Doc. 22, at 2]. He believes that he may be missing some pages of the voluminous Report and asks that Defendants re-send him a complete copy of the Report. He also asks that he be allowed an extension of time within which to file a response to the Martinez Report.

While Defendants certified that they sent the Martinez Report to the correct address, including zip code, Dailey asserts that he did not receive a timely or complete copy. To ensure that this case is decided on a full record, with both parties having access to all available information, the Court will grant Dailey’s request that Defendants re-send a complete copy of the Martinez Report to him at his current address, and will grant Dailey an extension of time to respond to the Martinez Report. The parties are again advised that the Martinez Report and any response thereto may be used in deciding whether to grant summary judgment, and the parties should therefore submit whatever materials they consider relevant to the claims and defenses. *See Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991).

IT IS THEREFORE ORDERED that Plaintiff’s Request [Motion] for Additional Time to File a Response to Defendants’ Martinez Report [Doc. 22] is granted.

IT IS FURTHER ORDERED that, on or before July 6, 2009, Defendants must re-send a complete copy of their previously-filed Martinez Report to Plaintiff at his latest address as listed in Court records.

IT IS FURTHER ORDERED that Plaintiff will have until August 10, 2009 to file his response, if any, to Defendants’ Martinez Report.


Lorenzo F. Garcia
Chief United States Magistrate Judge